

6 October 1998

Dr Pippa Carron
The Secretary
Senate Select Committee on the Socio-Economic
Consequences of the National Competition Policy
SG60 Parliament House
Canberra ACT 2600

Dear Dr. Carron:

The Co-operative Federation of Victoria Ltd welcomes the inquiry by the Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy.

At the outset, it is critical to emphasise that co-operatives support competition in the market. Co-operatives are competitive enterprises and their survival and growth depends on competing for members and their ongoing support and economic competitiveness in the market i.e. market share and profitability.

Co-operative philosophy and principles are consistent with competition. There is a difference, however, between competition and competition policy. Competition is a reality of the marketplace whereas competition policy is when governments create legislation and regulations to "facilitate" competition. A competition policy could have unintended consequences of being anti-competitive.

There are significant differences in the competition policies of different countries and it is important for the Senate Committee to identify these differences, attempt to establish the basis for these differences and what this might mean for the development of competition policy in Australia.

In the USA and Japan, for instance, there are defined exemptions for co-operatives from anti-trust activity. We believe that the purpose of these exemptions should be examined in the context of their applicability to Australia.

Section 24 of Japan's Antimonopoly Act, for instance, states: "The provision of this Act shall not apply to such acts of a co-operative (including a federation of co-operatives) which conforms to the requirements stipulated in each of the following paragraphs and which has been formed in accordance with the provisions of a separate law: Provided That the foregoing shall not apply to such cases where unfair trade practices are employed, or where competition in any particular field of trade is substantially restrained, resulting in unjust rise of prices:

- 1 Its purpose shall be mutual aid among small scale entrepreneurs or consumers;
- 2 It shall be voluntarily formed; and the participation in and withdrawal from the co-operative shall be voluntary;
- 3 Each member shall possess equal voting rights; and
- 4 If distribution of profits among members is contemplated, the limits shall be stipulated in a law or a Cabinet Ordinance, or in the articles of an association."

In Germany, purchasing associations of independent traders are permitted and exempt from the cartel ban if the participants are not compelled to purchase, if competition in the relevant market is not substantially impaired and if the agreement serves to promote the competitiveness of the participating companies.

The European Commission provides that "Agreements entered into by independent SMEs whose annual turnover and balance-sheet total do not exceed ECU 40 million and ECU 27 million re-

spectively and which have a maximum of 250 employees will not in principle be investigated by the Commission. The latter reserves the right to intervene, however, where such agreements significantly impede competition in a substantial part of the relevant market or where competition is restricted by the cumulative effect of parallel networks of similar agreements made between several producers or dealers.”

The Anti-Trust Division of the USA Department of Justice has concluded that : “Most joint purchasing arrangements among hospitals or other health care providers do not raise antitrust concerns. Such collaborative activities typically allow the participants to achieve efficiencies that will benefit consumers.”

In contrast, Australian competition policy seems to be based on the need to seek immunities from legal proceedings for arrangements and conduct that might otherwise breach the restrictive trade practices provisions – arrangements which would be normally exempted in other countries. Furthermore, Australian competition policy tends to emphasise the importance of better legal and regulatory protection through better disclosure and dispute resolution – rather than admitting the possibility of small business participating in co-operative and other purchasing arrangements to enhance their competitiveness.

The Senate Committee should review these differences and examine whether Australia’s competition policy has anti-competitive consequences for co-operatives and small business.

The enclosed booklets are attachments to this submission – Co-operatives and Public Policy, Shared Services Co-operatives For Community Agencies, Social Care Co-operatives and The Co-operative Model. I have enclosed seven copies of this submission and the attachments.

In co-operation,

David Griffiths
Chairman